IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8005 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNIL KEVALCHAND JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8005 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 08/11/2001

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution of India, the petitioner/detenue

who has been detained by the District Magistrate, Ahmedabad, vide order dated September 11, 2001 (Annexure-A to the petition) in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the P.B.M. Act' for short hereinafter), has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order or direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that on the basis of the information received by the office of Food & Civil Supplies Controller, Ahmedabad City, on June 14, 2001 raid was conducted at Kashibhavan, near bungalow of Gendalal Hukamchand Jain, Mehdikuva, outside Shahpur Darwaza, Ahmedabad. During the course of inspection, stock of 620 liters of blue kerosene, 400 liters white kerosene and other equipments and utensils were found out. Statement of petitioner was recorded in which he confessed that the stock of kerosene belongs to him. No purchase bill was produced at the time of inspection. It was stated by the petitioner that some ration card holders residing in Mehdikuva area are selling the stock of blue coloured kerosene obtained by them on their ration cards and after converting it from blue colour to white colour, selling it to the customers. It was also stated that the petitioner was purchasing blue coloured kerosene at the rate of Rs. 8.50 paise per liter and after converting into white kerosene, selling at Rs. 11.00 per liter. Samples of kerosene were drawn and sent for laboratory testing. As per the laboratory report, presence of blue colour was found in the sample of kerosene. The detaining authority recorded that the petitioner is not a licence holder, however, purchased unauthorisedly the stock of blue coloured kerosene, stored and sold it illegally and thereby acted in a manner prejudicial to the maintenance of supply of blue coloured kerosene, for his personal gain and thereby committed breach of Clause-3 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and Clause-3 of the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 and thereby committed breach of Section-3 of the Essential Commodities Act, 1955.

3. Though the petitioner has challenged the order of detention on various grounds, Mr. H.R.Prajapati, learned advocate for the petitioner has restricted his arguments to the effect that there was a delay on the part of the

detaining authority in forwarding the representation dated September 15, 2001 made by the petitioner/detenu. He, further contended that the detenu has sent the representation dated September 15, 2001 by RPAD to the detaining authority which was received by the office of the detaining authority on September 18, 2001. The detaining authority himself received the same on September 24, 2001 and the said representation was thereafter sent to the State Government on September 28, 2001 for consideration. Therefore, there is a delay on the part of the detaining authority in sending the representation to the State Government. He, therefore, contended that there is abnormal delay on the part of all the authorities which would vitiate the continued detention of the petitioner/detenu. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution. He, therefore, urged to quash and set aside the order of detention by allowing the petition and setting the petitioner/detenu at liberty forthwith. To buttress the aforesaid submissions, Mr. Prajapati has cited the following decisions on the question of delay:

i) RAJAMMAL V. STATE OF T.N. AND ANOTHER, (1999) 1 SUPREME COURT CASES 417

ii) KAMLESHKUMAR ISHWARDAS PATEL V. UNION OF INDIA AND OTHERS, 1995 SUPREME COURT CASES (Cri) 643

iii) RAGHAVENDRA SINGH V. SUPDT., DIST. JAIL, KANPUR, AIR 1986 SC 356

iv) KANJIBHAI HARJIBHAI RABARI V. STATE OF GUJARAT AND OTHERS, 1995 (2) GLR 1596

v) DILAWAR GULABBHAI SHAIKH V. COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, 1994 (2) GLR 1414

4. Mr. S.S.Patel, learned AGP appears for respondents Nos. 1, 2 & 3 and contested the petition by filing two separate affidavits in reply- one sworn by P.G.Vyas, Deputy Secretary to the Government, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar and the other sworn by I.K.Srinivas, District Magistrate, Ahmedabad. Ms P.J.Davawala, learned counsel appears for respondent no. 4, Union of India, and contested the petition by filing affidavit in reply sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

5. The sum and substance of the contents of the affidavits in reply filed by all the three authorities is that there is no delay on the part of any of the authorities in considering the representation made by the petitioner/detenu. On the contrary, representation was considered promptly without any delay and as expedititiously as possible by all the authorities.

6. Besides this, Mr. S.S.Patel, learned AGP contended that in the present case, though in the grounds of detention specific address of the authorities to whom representation can be made was given to the petitioner/detenu through his advocate, he has not sent his representation at that address. The representation dated September 15, 2001 was received by the office of the detaining authority on September 18, 2001 and the same was received by the detaining authority himself on September 24, 2001 and immediately thereafter, after 4 days the said representation was forwarded to the State Government. Therefore, Mr. S.S.Patel, learned AGP has contended that there is no delay on the part of the detaining authority in considering the representation. The representation sent by the petitioner/detenu not at the address mentioned in the grounds of detention itself suggests that the petitioner/detenu has sent the representation at the wrong address and, therefore, he cannot take the advantage of his own wrong inspite of the specific instructions given in the grounds of detention to send the representation at the address mentioned in the grounds of detention. So far as the representation received by the detaining authority on September 24, 2001 is concerned, delay of four days has been explained by the detaining authority and the delay of four days cannot be considered as delay on the facts and circumstances of this case. He, therefore, urged to dismiss the petition as there is no delay on the part of the detaining authority in forwarding the representation to the State Government.

7. Ms. P.J.Davawala, learned advocate for respondent No.4 contended that there is no delay on the part of the Central Government. The representation dated September 15, 2001 made by the petitioner/detenu to the Minister of Central Government, was received by the Central Government on October 1, 2001 and was decided by the detaining authority immediately after two days i.e. on October 13, 2001. Therefore, there is no delay on the part of the Central Government. She, therefore, urged to dismiss the petition.

8. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the affidavit in reply filed by the contesting respondents and the impugned orders and the decisions cited at the bar.

9. On having perusal of the relevant papers it is seen that representation dated September 15, 2001 which was sent to the detaining authority by RPAD was received by the office of the detaining authority on September 18, 2001 whereas the said representation was received by the detaining authority on September 24, 2001 and immediately thereafter it was sent to the Central Government.

10. The contention that the petitioner/detenu has not sent the representation at the address given in the ground of detention, therefore, petitioner cannot take advantage by saying that detaining authority has received the same on September 24, 2001 though it has been received by the office of the detaining authority on September 18, 2001, has no substance. There is no manner of doubt that the said representation was addressed by the petitioner/detenu to K.Srinivas, District Magistrate, Ahmedabad. As per the address given in the grounds of detention, it is stated that the representation should be addressed to District Magistrate, Ahmedabad, C/o Food and Civil Supplies Control Office, Second Floor, Handloom House Building, Ashram Road, Navarangpura, Ahmedabad.

11. A similar question arose before the Division Bench of this Court in the case of DILAWAR GULABBHAI SHAIKH's case (supra). In the said case as per the grounds of detention the detenu is required to send his representation to the detaining authority at the following address:

The Police Commissioner,
Ahmedabad City,
Office of the Police Commissioner (P.C.B.),
Shahibaug, Ahmedabad

The aforesaid address is the correct address at which the representation should have been sent. In the present case the representation is addressed at the following address:

The Police Commissioner,
Ahmedabad City,
Office of the Police Commissioner,

Shahibaugh, Ahmedabad

Therefore, Division Bench observed that the words 'P.C.B.' which ought to have been mentioned after the 'office of the Police Commissioner' are found to be missing and since those words are not mentioned it has gone altogether to a different branch of the office of Police Commissioner. The Division Bench has further observed that conduct of the office of the Police Commissioner, Ahmedabad in dealing with representation which is reached at the office of the Police Commissioner on the very next day is reprehensible and makes a travesty of Constitutional obligation and we very strongly condemn and denounce the delay caused in considering the representation. Our denunciation of delay caused in considering the representation must necessarily result into declaring the continued detention of detenu to be illegal, null and void.

12. Applying the aforesaid principles laid down by this Court to the facts of the present case, in the instant case the detaining authority has sent the representation with the name of the detaining authority i.e., by addressing Sri K.Srinivas, District Magistrate, Ahmedabad which was received by his office on September 18, 2001. Therefore, it can be said that it was rightly sent to the detaining authority.

13. There is no explanation in the affidavit in reply filed on behalf of the detaining authority that though the said representation was received by the office of the detaining authority on September, 18, 2001, why it has reached to him on September 24, 2001 and, why there is a further delay of four days in forwarding the representation to the State Government, and, in the absence of any explanation, I hold that there is a delay of more than four days in forwarding the representation to the State Government by the detaining authority.

14. A similar view is expressed in the case of KANJIBHAI HARJIBHAI RABARI's case (supra). In the said case this Court has said that the Chief Minister being the Home Minister under the Rules of Business, a representation made against the order of detention to the Chief Minister cannot be said to be no representation or made to a wrong authority simply because it is not made to the Deputy Secretary, Home Department.

15. In the case of Smt. GRACY V. STATE OF KERALA AND ANOTHER, AIR 1991 SC 1090, Supreme Court has held that dual obligation of consideration by Advisory Board

and independently by detaining authority, the representation is addressed to detaining authority or to Advisory Board is immaterial.

16. In the case of MOOSA HUSEIN SANGHAR V. THE STATE OF GUJARAT AND OTHERS, JT 1993 (1) SC 44, the Supreme Court has said that representation addressed to the Advisory Board and not to the State Government, did not absolve the State Government from the constitutional obligation flowing from Article 22(5) to consider the representation. The mode of address is only a matter of form which cannot whittle down the requirement of the Constitutional mandate in Article 22(5).

17. Now the question which falls for consideration is, as to whether, delay caused in forwarding the representation to the State Government by the detaining authority vitiated the continued detention and violated the fundamental rights enshrined in Article 22(5) of the Constitution.

18. In the case of RAJAMMAL V. STATE OF T.N.'s case (supra), the Supreme Court has said that the position therefore is now that if delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

19. In the case of RUMANA BEGUM V. STATE OF ANDHRA PRADESH AND ANOTHER, 1993 SUPP (2) SCC 341, Supreme Court has held that unexplained and unreasonable delay in disposal of that representation vitiated the detention.

20. Applying the aforesaid principles laid down by the Supreme Court as well this Court, at the cost of repetition be it stated that representation dated September 15, 2001 made by the petitioner/detenu to the detaining authority which in fact was received by the office of the detaining authority on September 18, 2001 remained idle in the office of the detaining authority. There is no further explanation why even after receiving the representation by the office of the detaining authority on September 18, 2001, why it has been received by the detaining authority himself on September 24, 2001. There is also no explanation why even after receiving the

representation by the detaining authority on September 24, 2001 it was sent on September 28, 2001 to the State Government. No convincing and swallowable explanation is forthcoming in the affidavits filed by the detaining authority justifying this delay.

21. On overall view of the matter, there is a considerable delay on the part of the detaining authority in forwarding the representation made by the petitioner/detenu to the State Government and, the infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution and that would render the continued detention bad in the eyes of law.

22. Seen in the above context, the detention order is vulnerable, bad in the eyes of law and therefore liable to be quashed and set aside by allowing the petition.

23. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated September 11, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*